

D & J Gravel Company, Inc. and Local 580, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 7-CA-19484

April 28, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND ZIMMERMAN

Upon a charge filed on June 26, 1981, by Local 580, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on D & J Gravel Company, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 7, issued a complaint on August 4, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges that there is an existing collective-bargaining relationship between the parties herein, and that, commencing on or about May 1, 1981, and at all times thereafter, Respondent has failed and refused, and continues to date to refuse, to bargain collectively with the Union by unilaterally and without notice to the Union failing to implement the May 1, 1981, wage increase provided for in the collective-bargaining agreement currently in effect between Respondent and the Union.

On January 19, 1982, counsel for the General Counsel filed directly with the Board a Motion for Default Judgment. Subsequently, on February 3, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Default Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Default Judgment

Section 102.20 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, provides:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing specifically states that, unless an answer to the complaint is filed by Respondent within 10 days of service thereof, "all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board." According to the uncontroverted allegations of the Motion for Default Judgment, the Acting Regional Director, on August 4, 1981, mailed the complaint and notice of hearing to Respondent by certified mail. Respondent received the complaint on August 5, 1981. On or about September 14, 1981, counsel for the General Counsel directed a letter to Respondent serving notice upon it that its answer was overdue and that, unless it filed an answer to the complaint by September 24, 1981, or otherwise obtained an extension of time to file an answer, counsel for the General Counsel would file a Motion for Default Judgment. Neither an answer nor a request for extension of time for the filing of an answer had been received at the time counsel for the General Counsel filed its Motion for Default Judgment. And, as noted, there has been no answer by Respondent to the Notice To Show Cause. Therefore, the allegations of the Motion for Default Judgment stand uncontroverted.

In view of Respondent's failure to file an answer, and no good cause having been shown therefor, the uncontroverted allegations of the complaint are deemed admitted and are found to be true. Accordingly, we grant the Motion for Default Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

D & J Gravel Company, Inc., is, and has been at all times material herein, engaged in the sale, distribution, and supply of construction materials, concrete, gravel, septic tanks, and related products at its principal office and place of business located at 4950 Mason Road, Howell, Michigan. During the year ending March 31, 1981, which period is representative of its operations during all times material herein, Respondent, in the course and conduct of its business operations, sold and distributed at its Howell, Michigan, place of business products valued in excess of \$50,000, of which products valued in excess of \$50,000 were shipped from said place of business directly to points located outside the State of Michigan.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Local 580, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Unit*

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All ready mix drivers, sand and gravel drivers, gravel equipment operators, mechanics, boom truck drivers, septic tank employees and yardmen employed by Respondent at its 4950 Mason Road, Howell, Michigan, facility; excluding guards and supervisors as defined by the Act.

B. *The Representative Status of the Union*

For many years and at all times relevant herein, by virtue of successive collective-bargaining agreements between Respondent and the Union, and continuing to date, the Union has been the exclusive representative of the employees in the above-described unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of

employment, within the meaning of Section 9(a) of the Act.

C. *Respondent's Failure and Refusal To Grant Wage Increases*

The collective-bargaining agreement in effect between Respondent and the Union provides, *inter alia*, for the payment of a wage increase on May 1, 1981. Commencing on or about May 1, 1981, and continuing at all times thereafter to date, Respondent has failed and refused, and continues to fail and refuse, to bargain with the Union, by unilaterally and without notice to the Union, failing to implement the May 1, 1981, wage increase provided for in the above-described contract.

Accordingly, we find that Respondent has, since May 1, 1981, and at all times thereafter, failed and refused to bargain collectively with the Union, by unilaterally and without notice to the Union, failing to implement the May 1, 1981, wage increase provided for in the aforementioned contract, and that, by such failure and refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action designed to effectuate the purposes of the Act.

We shall order that Respondent cease and desist from failing and refusing to bargain with the Union by failing to implement the May 1, 1981, wage increase provided for in the aforementioned contract. Affirmatively, we shall order that Respondent honor, upon the Union's request, all wage increase provisions of its collective-bargaining agreement with the Union. Accordingly, we shall order that Respondent make whole all the bargaining unit employees for the monetary losses suffered as a result of Respondent's unilateral failure to implement the May 1, 1981, wage increase provided for in the

collective-bargaining agreement. The amount to be paid to such employees shall be computed with interest thereon in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).¹

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. D & J Gravel Company, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 580, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All ready mix drivers, sand and gravel drivers, gravel equipment operators, mechanics, boom truck drivers, septic tank employees and yardmen employed by Respondent; excluding guards and supervisors as defined by the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all material times herein, the above-named labor organization has been and now is the exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. Respondent refused to bargain with the Union in violation of Section 8(a)(5) of the Act on and after May 1, 1981, by unilaterally and without notice to the Union failing to implement the May 1, 1981, wage increase provided for in its collective-bargaining contract.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, D & J Gravel Company, Inc., Howell, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively by unilaterally and without notice to the Union failing to implement the May 1, 1981, wage increase provided for in its collective-bargaining contract and in derogation of the Union's status as the exclusive bargaining representative of its employees in the following appropriate unit:

All ready mix drivers, sand and gravel drivers, gravel equipment operators, mechanics, boom truck drivers, septic tank employees and yardmen employed by Respondent; excluding guards and supervisors as defined by the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Make whole all bargaining unit employees for the monetary losses suffered as a result of Respondent's unilateral failure to implement the May 1, 1981, wage increase provided for in the collective-bargaining agreement, as provided in the section of this Decision entitled "The Remedy."

(b) Upon valid request of the Union, honor and implement all wage increases required by Respondent's collective-bargaining agreement with the Union from May 1, 1981.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Howell, Michigan, copies of the attached notice marked "Appendix."² Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

¹ See *Ogle Protection Service, Inc., and James Ogle, an Individual*, 183 NLRB 682, 683 (1970); and see, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

² In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Local 580, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, by failing to implement as of May 1, 1981, as requested by the Union, the wage increase provisions of our collective-bargaining contract in derogation of the Union's status as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole our employees in the unit set forth below for loss of pay suffered by reason of our unilateral failure to implement the May 1, 1981, wage increase provided for in the collective-bargaining agreement, with interest thereon.

WE WILL, upon the Union's valid request, honor all wage increase provisions of our collective-bargaining agreement with the Union from May 1, 1981. The bargaining unit is:

All ready mix drivers, sand and gravel drivers, gravel equipment operators, mechanics, boom truck drivers, septic tank employees and yardmen employed by the Employer; excluding guards and supervisors as defined by the Act.

D & J GRAVEL COMPANY, INC.